vides that Section 266 of the Judicial Code is amended to read in part as follows:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case." (Such case being an application for an "interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute" etc.)

B.

Statute of the State the Validity of Which is Involved.

"SECTION 1 of the Act of June 20, 1919, P. L. 521, 72 P. S. 2301, as last amended by the Act of June 22, 1931, P. L. 690, of the State of Pennsylvania, provides in part as follows:

" 'SECTION 1. *Be it enacted, &c.,* That a tax shall be, and is hereby, imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom in trust or otherwise, to persons or corporations in the following cases:

* * * * * * *

" '(*b*) When the transfer is by will or intestate laws of real property within this Commonwealth, or of goods, wares, or merchandise within this Commonwealth, or of shares of stock of corporations of this Commonwealth or of national banking associations located in this Commonwealth, and the decedent was a non-

resident of the Commonwealth at the time of his death.' "

C.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on the 11th day of April, 1933.

The application for appeal was presented on the 11th day of April, 1933.

D.

Nature of Case and Ruling Below.

A New York resident, having *temporarily* made an accommodation loan of a collection of rare paintings to a Pennsylvania museum for free exhibition to the public, and having died while the pictures were there on exhibition, the Secretary of Revenue and the Attorney General of Pennsylvania are proceeding to appraise, assess, and collect an inheritance tax thereon under the alleged authority of the Pennsylvania Inheritance Tax statute. The executor, a New York Trust Company, applied for an interlocutory injunction on the ground that the Pennsylvania statute, if it imposes such a tax, is unconstitutional, and if it does not, the acts of defendants are unconstitutional. The questions thus presented to the district court were:

I. Did that court have jurisdiction; and was a three-judge court required under section 266 of the Judicial Code?

II. Did plaintiff make out a case of unconstitutionality sufficient to support an interlocutory and final injunction?

III. If so, was plaintiff entitled to equitable relief on the facts?

The ruling of the District Court, of three judges, was that the plaintiff had an adequate remedy at law and, therefore, that the appeal should be dismissed for want of equitable jurisdiction.

Plaintiff represents that it does not have an adequate remedy at law and, therefore, that the specially constituted District Court abused its discretion in denying the interlocutory injunction because:

1. The laws of Pennsylvania do not extend to the taxpayer the remedy of paying the tax under protest and bringing suit in the court for its recovery (Opinion of lower court in case at bar, paragraph 8).

2. The only clear way to test the validity of the tax, under the law of Pennsylvania, and this was regarded as an adequate remedy at law by the lower court, is to take an appeal from the administrative appraisers to the Dauphin County Court upon posting a bond to cover the full amount of the tax. This remedy is not available on the law side of the Federal courts and, since it denies to the plaintiff, a non-resident of Pennsylvania, its constitutional right to a trial in the Federal courts, is not an adequate remedy at law. *Smyth* v. *Ames*, 169 U. S. 466, 516; *Chicago, B. & Q. R. R.* v. *Osborne*, 265 U. S. 14, 16; *Risty* v. *Chicago, R. I. & Pac. Ry. Co.*, 270 U. S. 378, 388. Moreover, the cost of the

bond required is substantial, amounting in this case to at least $1,000 a year, and cannot be recovered by the plaintiff even if successful in its appeal. This is analagous to cases where it was held that a suit to recover is an inadequate remedy at law where no interest can be recovered in the suit. *Hopkins* v. *Southern Cal. Tel. Co.*, 275 U. S. 393, 399; *Nutt* v. *Ellerbe*, 56 *Fed.* (2d) 1058, 1063; *Southern Railway Co.* v. *Query*, 21 Fed. (2d) 333, 342.

3. The District Court also relied upon new and unconstrued legislation of 1929 whereby, after assessment, the State could sue in its court for collection of the tax, stating that the right to defend in such suit is an adequate remedy at law. Assuming that the assessment could be collaterally attacked at such a late date, which is doubtful, the lower court admitted in its opinion (paragraph 13) that the case could not be removed to the Federal courts on the ground of diversity of citizenship. This renders the remedy at law inadequate. *Nevada-California Power Co.* v. *Hamilton*, 235 Fed. 317; affirmed (C. C. A. 9th); *Franklin* v. *Nevada-California Power Co.*, 264 Fed. 643, 645.

4. The tax when assessed becomes a lien upon the property taxed and the removal of this cloud on title is sufficient grounds for equitable jurisdiction. *Fisher* v. *Brucker*, 41 Fed. (2d) 774; *Greene* v. *Louisville, etc., R. R. Co.*, 244 U. S. 499; *Risty* v. *Chicago, R. I. & Pac. Co.*, 270 U. S. 378, 388.

5. Time is of the essence of the remedy in this case because delays by litigation in the state courts will

cause the estate to forfeit its rights to the 80 per cent credit on its Federal estate tax under the statute of limitations there provided; and such delays are, moreover, hindering the proper administration of the estate in the City of New York, to the irreparable injury of the beneficiaries. The taxing officials of Pennsylvania delayed action in this case for eighteen months prior to the filing of the bill of complaint and there is no statute of limitations on assessments in Pennsylvania which would ever require action by the State officials, which is a prerequisite to the appeal by the plaintiff to the Dauphin County Court and to the defense in a suit by the State against the executor.

6. The court below apparently confused the question as to what constitutes an adequate remedy under the Due Process Clause (where a remedy confined to the *State courts* is adequate) with the question as to the adequacy of a remedy at law to prevent Federal equity jurisdiction, where the remedy must be available in the *Federal courts*. In addition to this error, the lower court erroneously disregarded the necessity for the bond in the State court, the presence of the cloud on plaintiff's title, and the possible loss of the right to the 80 per cent credit.

E.

Cases Believed to Sustain Jurisdiction.

The following decisions of the Supreme Court of the United States are believed to sustain jurisdiction of this appeal:

Chicago, B. & Q. R. R. Co. v. *Osborne,* 265 U. S. 14, 16.

Stewart Dry Goods Co. v. *Lewis*, 53 Sup. Ct. 66.
Louis K. Liggett Company v. *Baldrige*, 278 U. S. 105.
Chicago G. W. Rwy. v. *Kendall*, 266 U. S. 94, 97.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 266 of the Judicial Code, as amended by the act of February 13, 1925.

Respectfully submitted,

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